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PTO/SB/21 (08-00)

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U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	<b>Application Number</b>	08/644,289	
	<b>Filing Date</b>	May 10, 1996	
	<b>First Named Inventor</b>	Molly F. Kulesz-Martin	
	<b>Group Art Unit</b>	1642	
	<b>Examiner Name</b>	M. Davis	
<b>Total Number of Pages in This Submission</b>	<b>14</b>	<b>Attorney Docket Number</b>	RPP:135D US

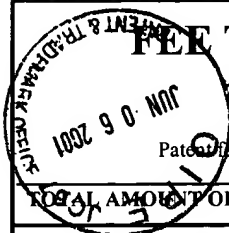
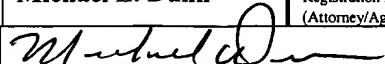
ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
<b>Remarks</b>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Michael L. Dunn Dunn & Associates
Signature	
Date	June 04, 01

CERTIFICATE OF MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: June 04, 01	
Typed or printed name	Michael L. Dunn
Signature	
Date	June 4, 01

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ADDITIONAL FEES</b> <table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <thead> <tr> <th>Fee Code</th> <th>Large Entity Fee (\$)</th> <th>Small Entity Fee Code</th> <th>Small Entity Fee (\$)</th> <th>Fee Description</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr><td>105</td><td>130</td><td>205</td><td>65</td><td>Surcharge - late filing fee or oath</td><td></td></tr> <tr><td>127</td><td>50</td><td>227</td><td>25</td><td>Surcharge - late provisional filing fee or cover sheet</td><td></td></tr> <tr><td>139</td><td>130</td><td>139</td><td>130</td><td>Non-English specification</td><td></td></tr> <tr><td>147</td><td>2,520</td><td>147</td><td>2,520</td><td>For filing a request for ex parte reexamination</td><td></td></tr> <tr><td>112</td><td>920*</td><td>112</td><td>920*</td><td>Requesting publication of SIR prior to Examiner action</td><td></td></tr> <tr><td>113</td><td>1,840*</td><td>113</td><td>1,840*</td><td>Requesting publication of SIR after Examination action</td><td></td></tr> <tr><td>115</td><td>110</td><td>215</td><td>55</td><td>Extension for reply within first month</td><td></td></tr> <tr><td>116</td><td>390</td><td>216</td><td>195</td><td>Extension for reply within second month</td><td></td></tr> <tr><td>117</td><td>890</td><td>217</td><td>445</td><td>Extension for reply within third month</td><td></td></tr> <tr><td>118</td><td>1,390</td><td>218</td><td>695</td><td>Extension for reply within fourth month</td><td></td></tr> <tr><td>128</td><td>1,890</td><td>228</td><td>945</td><td>Extension for reply within fifth month</td><td></td></tr> <tr><td>119</td><td>310</td><td>219</td><td>155</td><td>Notice of Appeal</td><td></td></tr> <tr><td>120</td><td>310</td><td>220</td><td>155</td><td>Filing a brief in support of an appeal</td><td></td></tr> <tr><td>121</td><td>270</td><td>221</td><td>135</td><td>Request for oral hearing</td><td></td></tr> <tr><td>138</td><td>1,510</td><td>138</td><td>1,510</td><td>Petition to institute a public use proceeding</td><td></td></tr> <tr><td>140</td><td>110</td><td>240</td><td>55</td><td>Petition to revive - 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<b>Name (Print/Type)</b> Michael L. Dunn		<b>Registration No.</b> 25,330 <small>(Attorney/Agent)</small>		<b>Telephone</b> 716-433-1661		<b>Date</b> June 04, 01																																																																																																																																																																																					
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**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicants: Molly F. Kulesz-Martin  
Serial No: 08/644,289  
Filed: May 10, 1996  
Examiner: M. Davis  
For: p53as PROTEIN AND  
ANTIBODY THEREFOR

Art Unit: 1642

I certify that this **REPLY BRIEF** is being deposited on **June 4, 2001** with the U.S. Postal Service as first class mail addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231

Michael L. Dunn

Registration No. 25,330

**REPLY BRIEF**

Box AF  
Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

This is in reply to the Examiner's Answer dated May 24, 2001.

Many of the arguments raised by the Examiner are refuted by the original Brief on Appeal; however, a number of arguments in the Examiner's Answer are new or expanded.

The Examiner's statement that the brief does not contain a statement with respect to related appeals and interferences is not correct. The required statement is clearly given at the bottom of page 1 of the Brief.

The Examiner's statement with respect to grouping of claims is not agreed with and in any case is irrelevant. The Appellant has given reasons why the claims do not stand or fall together and why the claims may be considered independently patentable over the cited art. It is

thus the province of the Board, not the Examiner, to determine patentability of the claims and it is the province of the Board, not the Examiner, to determine whether the cited art applies (or does not apply) to the claims equally.

The Examiner's argument with respect to indefinite nature of the language "active wild type", in Claims 1, 3-6, 8-11, 17 and 18, disregards clear claim limitations that the activity referred to is "growth regulation". The Examiner may not broaden the claim language beyond its clear limits and then say that the broadening done by the Examiner is indefinite.

The Examiner's argument with respect to the "new matter" rejection of Claims 1, 3-6, 8-11, 17 and 18 is flawed for reasons similar to the above. Again the Examiner improperly interprets the claims beyond its clear limits and then says that the misinterpretation encompasses new matter. The claims clearly require that the claimed p53as be the same as p53 up to the final 50 carboxy terminal amino acids of p53. Any differences between p53 and p53as thus may not be before the final 50 carboxy terminal amino acids of p53. Despite this clear limitation, the Examiner says that the claims encompass new matter because an epitope different than p53 could be anywhere in p53as. That interpretation is illogical and is simply not possible and must disregard the clear requirement of identity up to the final 50 amino acids.

It has always been the position of the Appellant that the unique epitope in the p53as of the invention was there to distinguish p53as from p53. For the first time in the Examiner's answer, the Examiner has raised an argument that there is no disclosure in the specification that the epitope be unique with respect to all proteins. **This is a new argument first presented in the Examiner's Answer and as such is an untimely new ground of rejection that should be**

**presented as such to permit amendment.** No amendment in reply to the final rejection made any changes to the claims that would affect the nature of this new argument. The new argument therefore was not made necessary by any action on the part of the Appellants. In any case it is the position of the Appellants that the “unique epitope” referred to means unique as between p53 and p53as and has always been argued as such. Whether or not the epitope is unique as to all other proteins is essentially irrelevant with respect to the invention since the point is to distinguish between p53 and p53as.

In any case, as previously discussed in the brief and throughout prosecution, one skilled in the art, once given motivation by the present application, can easily add epitopes to the end of p53as to distinguish from p53. There is no new matter. If, however, the Board agrees with the Examiner that there is new matter, it is requested that a formal new rejection be given so as to allow the Appellants to amend.

The arguments made by the Examiner with respect to the art rejections have already been addressed in the brief. It is sufficient to simply reiterate that these rejections are classic hindsight. The references, no matter how they are combined simply do not suggest the invention. As an example, the Examiner uses classic hindsight logic by stating that because Han et al teaches that a part of a p53as (clearly not functional) in a plasmid for the purpose of study renders it obvious to incorporate a complete p53as into a plasmid for use as a vector. This is a clear quantum leap unsupported by the cited art. The Examiner makes an attempt to support such a position by saying that full length sequences for proteins other than p53as have been incorporated into plasmids for study and somehow that makes it obvious to incorporate a

sequence for a different (p53as) into a plasmid, not even for study, but for use as a vector. Such an argument is clearly improper.

In summary, none of the references cited by the Examiner in any of the rejections suggest incorporating p53as into anything and certainly not into a plasmid or viral vector. None of the cited references have this critical defect cured by anything disclosed in any of the other cited references.

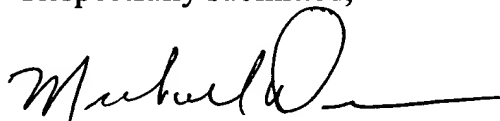
The rejections should be reversed.

#### Conclusion

In view of the foregoing, it is clear that the pending claims are definite, contain no new matter and are patentable over the cited prior art. Reversal of the Examiner and allowance of all claims are therefore respectfully requested.

Dated: June 4, 2001

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael L. Dunn", with a long horizontal flourish extending to the right.

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